

**141.206 Filing of returns by pass-through entities -- Withholding requirements on owners of pass-through entities -- Apportionment issues for pass-through entities.**

- (1) Every pass-through entity doing business in this state shall, on or before the fifteenth day of the fourth month following the close of its annual accounting period, file a copy of its federal tax return with the form prescribed and furnished by the department.
- (2)
  - (a) Pass-through entities shall calculate net income in the same manner as in the case of an individual under KRS 141.019 and the adjustment required under Sections 703(a) and 1363(b) of the Internal Revenue Code.
  - (b) Computation of net income under this section and the computation of the partner's, member's, or shareholder's distributive share shall be computed as nearly as practicable identical with those required for federal income tax purposes except to the extent required by differences between this chapter and the federal income tax law and regulations.
- (3) Individuals, estates, trusts, or corporations doing business in this state as a partner, member, or shareholder in a pass-through entity shall be liable for income tax only in their individual, fiduciary, or corporate capacities, and no income tax shall be assessed against the net income of any pass-through entity, except as required:
  - (a) For S corporations under KRS 141.040; and
  - (b) For a partnership level audit under KRS 141.211.
- (4)
  - (a) Every pass-through entity required to file a return under subsection (1) of this section, except publicly traded partnerships as described in KRS 141.0401(6)(a)18. and (b)14., shall withhold Kentucky income tax on the distributive share, whether distributed or undistributed, of each nonresident individual partner, member, or shareholder.
  - (b) Withholding shall be at the maximum rate provided in KRS 141.020.
- (5)
  - (a) Every pass-through entity required to withhold Kentucky income tax as provided by subsection (4) of this section shall pay estimated tax for the taxable year, if for a nonresident individual partner, member, or shareholder, the estimated tax liability can reasonably be expected to exceed five hundred dollars (\$500).
  - (b) The payment of estimated tax shall contain the information and shall be filed as provided in KRS 141.207.
- (6)
  - (a) If a pass-through entity demonstrates to the department that a partner, member, or shareholder has filed an appropriate tax return for the prior year with the department, then the pass-through entity shall not be required to withhold on that partner, member, or shareholder for the current year unless the exemption from withholding has been revoked pursuant to paragraph (b) of this subsection.
  - (b)
    1. An exemption from withholding shall be considered revoked if the partner, member, or shareholder does not file and pay all taxes due in a timely manner.

2. An exemption so revoked shall be reinstated only with permission of the department.
  3. If a partner, member, or shareholder who has been exempted from withholding does not file a return or pay the tax due, the department may require the pass-through entity to pay to the department the amount that should have been withheld, up to the amount of the partner's, member's, or shareholder's ownership interest in the entity.
  4. The pass-through entity shall be entitled to recover a payment made pursuant to this paragraph from the partner, member, or shareholder on whose behalf the payment was made.
- (7) In determining the tax under this chapter, a resident individual, estate, or trust that is a partner, member, or shareholder in a pass-through entity shall take into account the partner's, member's, or shareholder's total distributive share of the pass-through entity's items of income, loss, deduction, and credit.
- (8) In determining the tax under this chapter, a nonresident individual, estate, or trust that is a partner, member, or shareholder in a pass-through entity required to file a return under subsection (1) of this section shall take into account:
- (a)
    1. If the pass-through entity is doing business only in this state, the partner's, member's, or shareholder's total distributive share of the pass-through entity's items of income, loss, and deduction; or
    2. If the pass-through entity is doing business both within and without this state, the partner's, member's, or shareholder's distributive share of the pass-through entity's items of income, loss, and deduction multiplied by the apportionment fraction of the pass-through entity as prescribed in subsection (11) of this section; and
  - (b) The partner's, member's, or shareholder's total distributive share of credits of the pass-through entity.
- (9) A corporation that is subject to tax under KRS 141.040 and is a partner or member in a pass-through entity shall take into account the corporation's distributive share of the pass-through entity's items of income, loss, and deduction and:
- (a)
    1. For taxable years beginning on or after January 1, 2007, but prior to January 1, 2018, shall include the proportionate share of the sales, property, and payroll of the limited liability pass-through entity or general partnership in computing its own apportionment factor; and
    2. For taxable years beginning on or after January 1, 2018, shall include the proportionate share of the sales of the limited liability pass-through entity or general partnership in computing its own apportionment factor; and
  - (b) Credits from the partnership.
- (10) (a) If a pass-through entity is doing business both within and without this state, the pass-through entity shall compute and furnish to each partner, member, or shareholder the numerator and denominator of each factor of the apportionment fraction determined in accordance with subsection (11) of this

section.

- (b) For purposes of determining an apportionment fraction under paragraph (a) of this subsection, if the pass-through entity is:
    - 1. Doing business both within and without this state; and
    - 2. A partner or member in another pass-through entity;then the pass-through entity shall be deemed to own the pro rata share of the property owned or leased by the other pass-through entity, and shall also include its pro rata share of the other pass-through entity's payroll and sales.
  - (c) The phrases "a partner or member in another pass-through entity" and "doing business both within and without this state" shall extend to each level of multiple-tiered pass-through entities.
  - (d) The attribution to the pass-through entity of the pro rata share of property, payroll and sales from its role as a partner or member in another pass-through entity will also apply when determining the pass-through entity's ultimate apportionment factor for property, payroll and sales as required under subsection (11) of this section.
- (11) (a) For taxable years beginning prior to January 1, 2018, a pass-through entity doing business within and without the state shall compute an apportionment fraction, the numerator of which is the property factor, representing twenty-five percent (25%) of the fraction, plus the payroll factor, representing twenty-five percent (25%) of the fraction, plus the sales factor, representing fifty percent (50%) of the fraction, with each factor determined in the same manner as provided in KRS 141.901, and the denominator of which is four (4), reduced by the number of factors, if any, having no denominator, provided that if the sales factor has no denominator, then the denominator shall be reduced by two (2).
- (b) For taxable years beginning on or after January 1, 2018, a pass-through entity doing business within and without the state shall compute an apportionment fraction as provided in KRS 141.120.
- (12) Resident individuals, estates, or trusts that are partners in a partnership, members of a limited liability company electing partnership tax treatment for federal income tax purposes, owners of single member limited liability companies, or shareholders in an S corporation which does not do business in this state are subject to tax under KRS 141.020 on federal net income, gain, deduction, or loss passed through the partnership, limited liability company, or S corporation.
- (13) An S corporation election made in accordance with Section 1362 of the Internal Revenue Code for federal tax purposes is a binding election for Kentucky tax purposes.
- (14) (a) Nonresident individuals shall not be taxable on investment income distributed by a qualified investment partnership. For purposes of this subsection, a "qualified investment partnership" means a pass-through entity that, during the taxable year, holds only investments that produce income that would not be taxable to a nonresident individual if held or owned individually.

- (b) A qualified investment partnership shall be subject to all other provisions relating to a pass-through entity under this section and shall not be subject to the tax imposed under KRS 141.040 or 141.0401.
- (15) (a) A pass-through entity shall deliver to the department a return upon a form prescribed by the department showing the total amounts paid or credited to its nonresident individual partners, members, or shareholders, the amount paid in accordance with this subsection, and any other information the department may require.
- (b) A pass-through entity shall furnish to its nonresident partner, member, or shareholder annually, but not later than the fifteenth day of the fourth month after the end of its taxable year, a record of the amount of tax paid on behalf of the partner, member, or shareholder on a form prescribed by the department.

**Effective:** June 29, 2021

**History:** Amended 2021 Ky. Acts ch. 156, sec. 9, effective June 29, 2021. -- Amended 2020 Ky. Acts ch. 91, sec. 14, effective April 15, 2020. -- Amended 2019 Ky. Acts ch. 151, sec. 49, effective June 27, 2019; and ch. 196, sec. 15, effective June 27, 2019. -- Amended 2018 Ky. Acts ch. 171, sec. 81, effective April 14, 2018; and ch. 207, sec. 81, effective April 27, 2018. -- Amended 2010 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 4, effective June 4, 2010. -- Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 9, effective June 28, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 489, effective June 20, 2005; and ch. 168, sec. 17, effective March 18, 2005. -- Amended 2002 Ky. Acts ch. 230, sec. 8, effective July 15, 2002. -- Amended 1988 Ky. Acts ch. 332, sec. 2. -- Created 1954 Ky. Acts ch. 79, sec. 17, effective June 17, 1954.

**Legislative Research Commission Note (6/29/2021).** This statute was amended in Section 9 of 2021 Ky. Acts ch. 156. Section 38 of that Act provides that Section 9 applies to taxable years beginning on or after January 1, 2022.

**Legislative Research Commission Note (4/15/2020).** 2020 Ky. Acts ch. 91, sec. 76 provides that the changes made to this statute in Section 14 of that Act apply to taxable years beginning on or after January 1, 2019.

**Legislative Research Commission Note (6/27/2019).** Although 2019 Ky. Acts ch. 151, sec. 49, contained a citation to "subsection (6)(a)18. of this section" in subsection (4)(a) of this statute, it is clear from the context that "subsection (6)(a)18. of Section 41 of this Act" (codified as KRS 141.0401) was intended, and this manifest clerical or typographical error was corrected in codification under the authority of KRS 7.136.

**Legislative Research Commission Note (6/28/2006).** 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 73, provides that "unless a provision of this Act specifically applies to an earlier tax year, the provisions of this Act shall apply to taxable years beginning on or after January 1, 2007."

**Legislative Research Commission Note (3/18/2005).** 2005 Ky. Acts ch. 168, sec. 165, provides that this section shall apply to tax years beginning on or after January 1, 2005.

**Legislative Research Commission Note (3/18/2005).** 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.